

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Appellant:)	Confirmation No. 8836
)	
Skatter et al.)	
)	
Filed: September 12, 2001)	Art Unit: 2451
)	
Serial No.: 09/954,724)	Examiner: Tang, Karen C.
)	
)	Docket No.: 101217.00033
For: METHOD AND APPARATUS FOR A)	
DISTRIBUTABLE GLOBE GRAPHICAL OBJECT)	

APPEAL BRIEF

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	OBJECT)	

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APPELLANT'S BRIEF (37 C.F.R. 4.1.37)

This brief is in furtherance of the Final Office Action mailed April 6, 2010.

The final page of this brief bears the practitioner's signature.

I. REAL PARTY OF INTEREST (37 C.F.R. § 41.37(c)(1))

The real party in interest in this appeal is H.E.B., LLC, by virtue of an Assignment from Scott A. Haire to H.E.B., LLC, recorded with the U.S. Patent and Trademark Office on July 5, 2007 at Reel 019525, Frame 0807; and by virtue of an Assignment from Convioi, Inc. to Scott A. Haire. The Order and Purchase and Sale Agreement was recorded with the U.S. Patent and Trademark Office on July 2, 2007 at Reel 019506, Frame 0713; and by virtue of an Assignment from Digitally Secured Communications, Inc. to H.E.B., LLC. The Order, Rescission and Settlement Agreement was recorded with the U.S. Patent and Trademark Office on June 19, 2007 at Reel 019450, Frame 0001; and by virtue of an Assignment from Digitally Secured Communications, Inc. to Envioi Technologies, LLC. The Order, Rescission and Settlement Agreement was recorded with the U.S. Patent and Trademark Office on April 12, 2007 at Reel 019190, Frame 0132; and by virtue of an Assignment from Envioi Technologies, LLC to Digitally Secured Communications, Inc., recorded with the U.S. Patent and Trademark office on July 26, 2004 at Reel 014902, Frame 0870; and by virtue of an Assignment from Envioi Healthcare, LLC to Envioi Technologies, LLC, recorded with the U.S. Patent and Trademark Office on January 7, 2004 at Reel 014868, Frame 0812; and by virtue of an Assignment from Envioi, Inc. to Envioi Healthcare, LLC, recorded with the U.S. Patent and Trademark Office on January 7, 2004 at Reel 014868, Frame 0858; and by virtue of an Assignment from Sondre Skatter and Michael Tolson to Envioi, Inc., recorded with the U.S. Patent and Trademark Office on February 28, 2002 at Reel 012690, Frame 0924.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c)(2))

There are no such appeals or interferences.

III. STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(3))

The status of the claims in this application are:

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 23 (Claims 1-23)

Claims currently pending in the application: 23 pending claims

B. STATUS OF ALL THE CLAIMS

1. Claims cancelled: None
2. Claims withdrawn from consideration but not cancelled: None
3. Claims pending: 1-23
4. Claims allowed: NONE.
5. Claims rejected: 1-23

C. CLAIMS ON APPEAL

The claims on appeal are: 1-23

IV. STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(4))

The claims presently pending are those submitted with the filing of an Amendment on August 5, 2008.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(e)(5))

The following summary is provided without any intention to limit the scope of the claims.

Claim 1 includes a method of presenting data over a network comprising providing on a display device of a data processor a persistent graphical object representing a rotating globe that depicts a plurality of geographical points and a plurality of geographical regions representative of geographical locations of a physical world. By way of example and not by limitation, see, e.g., page 4, lines 15-20. Extracting from a data memory a plurality of content elements from at least one data file, at least one of the content elements conveying information related to at least one geographical location of the physical world. By way of example and not by limitation, see, e.g., page 5, lines 15-17. Superimposing the at least one content element on the graphical object at the geographical point or geographical region that is representative of the geographical location of the physical world to which the content element relates. By way of example and not by limitation, see, e.g., page 9, lines 10-14. Presenting said graphical object in a composition accessed by an initial application, said object having state and having one or more external connections. By way of example and not by limitation, see, e.g., page 9, lines 24-27. Allowing a user to indicate relocation of said graphical object to a location outside of said initial application. By way of example and not by limitation, see, e.g., page 8, lines 10-13. Thereafter moving said graphical object to said outside location, preserving state of said graphical object. Allowing a user to indicate relocation of said graphical object to a location outside of said initial application. By way of example and not by limitation, see, e.g., page 8, lines 10-13.

Claim 12 includes an electronic data processing system presenting web content comprising an information appliance displayable representation of a globe, where the globe is persistent and is displayed using three dimensional software rendering and wherein the globe depicts a plurality of geographical points and a plurality of geographical regions representative of geographical locations of a physical world. By way of example and not by limitation, see, e.g., page 4, lines 15-20. A logic module that projects web content onto the surface of said representation of the globe. By way of example and not by limitation, see, e.g., Fig. 4 and the associated description at page 9, lines 6-22. Wherein the logic module is configured to extract a plurality of content elements from at least one data file of a separate application, at least one of

the content elements conveying information related to at least one geographical location of the physical world. By way of example and not by limitation, see, e.g., Fig. 4 and the associated description at page 9, lines 6-22. Wherein the logic module is configured to superimpose the at least one content element on the globe at the geographical point or geographical region that is representative of the geographical location of the physical world to which the content element relates. By way of example and not by limitation, see, e.g., Fig. 4 and the associated description at page 9, lines 6-22.

Claim 14 includes a system according to claim 12 further comprising means for rendering web content on the globe as channels, wherein a channel is a set of related content from a content provider, an association of content providers, or a broker of web content, and wherein a content item in a channel has a geographical distribution. Structure corresponding to this means plus function limitation can be found at Fig. 4 and the associated description at page 9, lines 6-22.

Claim 15 includes a system according to claim 14 further comprising means for associating the content item with points on said representation of the globe or regions on said representation of the globe. Structure corresponding to this means plus function limitation can be found at Fig. 4 and the associated description at page 9, lines 6-22.

Claim 16 includes a system according to claim 14 further comprising means for providing a textual window that will pop up that reveals details about the content item when a cursor is moved over the content item. Structure corresponding to this means plus function limitation can be found at page 8, lines 27-31.

Claim 17 includes a system according to claim 14 further comprising means for associating the content item with actions that are triggered when a user selects the content item. Structure corresponding to this means plus function limitation can be found at page 8, lines 27-31.

Claim 19 includes a system according to claim 14 further comprising means for defining channels using Extensible Markup Language format describing content at least in terms of geographic position, click-action, and parameters for click action. Structure corresponding to this means plus function limitation can be found at Fig. 4 and the associated description at page 9, lines 6-22.

Claim 21 includes a system according to claim 14 comprising means for licensing channels to channel providers on a pay per channel, pay per end user, or a pay per user action

basis. Structure corresponding to this means plus function limitation can be found at page 9, line 29 to page 10, line 6.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
((37 C.F.R. § 41.37(c)(6))

1. Whether claim 23 was properly objected to because it uses acronyms in the claim language without initially providing the complete term.

2. Whether claims 12-13 are properly rejected under 35 U.S.C. 101 because the system claims appear to consist only software modules, therefore, a system that contains only software modules is considered as a program per se, which is not one of the categories of statutory subject matter.

3. Whether claims 18 and 20 were properly rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

4. Whether claims 1-5, 8-10, 12-18, and 20-22 were properly rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 2004/0119759 to Barros, in view of U.S. Patent No. 5,945,985 to Babin et al., and further in view of U.S. Patent No. 6,687,745 to Franco et al.

5. Whether claim 23 was properly rejected under 35 U.S.C. 103(a) as being unpatentable over Barros, in view of Babin et al., and further in view of Franco et al. and U.S. Patent 6,647,370 to Fu et al.

6. Whether claims 6, 7, 11 and 9 were properly rejected under 35 U.S.C. 103(a) as being unpatentable over Barros, in view of Franco et al., and further in view of Official Notice.

VII. ARGUMENTS ((37 C.F.R. § 41.37 (c)(7))

1. The objection to claim 23 is factually improper, because it uses acronyms in the claim language after the complete term has been provided.

In response to the Office Action mailed March 25, 2009, Applicants amended claim 12 to recite three dimensional, as requested by the Examiner. Nevertheless, the Examiner maintains that “Claim 12 recites the limitation ‘3D,’” which is clearly in error. The Board should **REVERSE** the Examiner’s objection.

2. Claims 12-13 are improperly rejected under 35 U.S.C. 101, because an electronic data processing system is statutory subject matter.

In regards to the rejection of claims 12-13 under 35 U.S.C. 101, the Applicants believe that under the PTO Interim Guidance for Determining Subject Matter Eligibility for Process Claims in View of *Bilski v. Kappos* that the rejections are improper. In particular, the Applicants believe that the various claims are either 1) directed toward applying a law of nature, 2) that the law of nature is practically applied, 3) that the application of the law of nature meaningfully limits the execution of the steps, 4) that the claims are more than a mere statement of a concept, 5) that the claims describe a particular solution to a problem to be solved, 6) that the claims implement a concept in some tangible way, or 7) that the performance of the steps is observable and verifiable. The Examiner’s assertion that software “is not one of the categories of statutory subject matter” is incorrect in light of the PTO Interim Guidance and contradictory to the Supreme Court’s decision in *Bilski*. The rejection of claims 12-13 under 35 U.S.C. 101 should be **REVERSED**.

3. The rejection of claims 18 and 20 under 35 U.S.C. 112, second paragraph is improper, because the Applicants are entitled to act as their own lexicographer.

The term *Globevoii* is defined extensively throughout the specification, see, by way of example and not by limitation, page 4, lines 1-11, 15-20 and 22-31; page 5 lines 4-13 and 19-25; and page 6, lines 8-31. *Globevoii* is not a commercially available software application, as asserted by the Examiner, but rather a term coined by the Applicants acting as their own lexicographer, and having the functionality described in the specification. An applicant is

entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" and, if done, must "'set out his uncommon definition in some manner within the patent disclosure' so as to give one of ordinary skill in the art notice of the change" in meaning) (quoting *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992)). Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings"). The rejection of claims 18 and 20 under 35 U.S.C. 112, second paragraph should therefore be **REVERSED**.

4. Barros in view of Babin and further in view of Franco fails to provide a prima facie basis for the rejection of claims 1-5, 8-10, 12-18, and 20-22 under 35 U.S.C. 103(a), because they fail to disclose each element of the claimed inventions.

The construction of the claims adopted by the Examiner is incorrect, and is used to improperly reject the claims. Claim construction is a question of law, and is reviewed *de novo*. *Markman v. Westview*, 52 F. 3d 967, 34 USPQ2d 1321 (Fed. Cir. 1995), *aff 'd* 116 S.Ct. 1384 (1996). No deference is given to the claim constructions adopted by the Examiner, most of which are implicit and which are not explicitly set forth. Because claim construction is reviewed *de novo*, it is not necessary for the Examiner to set forth an explicit construction, and remand for that reason is therefore not required in the event that the Examiner fails to set forth an explicit claim construction. During prosecution, claim terms are to be given their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359 (Fed. Cir. 1999). As such, the broadest reasonable interpretation of a claim term is its ordinary meaning to one skilled in the

art. The Appellants request that the Board pay careful attention to the numerous claim construction issues discussed below.

Each claim identified by a heading in underlining and bold is argued separately.

Claim 1 includes a method of presenting data over a network comprising providing on a display device of a data processor a persistent graphical object representing a rotating globe that depicts a plurality of geographical points and a plurality of geographical regions representative of geographical locations of a physical world and extracting from a data memory a plurality of content elements from at least one data file, at least one of the content elements conveying information related to at least one geographical location of the physical world. Barros does not disclose a persistent graphical object. The terms “persist,” “persistent” and “persistence” are not even used anywhere in Barros. The display of Barros is not persistent, and appears to be generated within a web browser. One of ordinary skill the art would be unable to map the layered and slotted formatted data from both local and remote sources that are used to provide a highly versatile information display of Barros onto an animated GIF, a process which Babin and Franco also fail to disclose.

In addition, claim 1 includes presenting said graphical object in a composition accessed by an initial application, said object having state and having one or more external connections, allowing a user to indicate relocation of said graphical object to a location outside of said initial application and thereafter moving said graphical object to said outside location, preserving state of said graphical object. The Examiner relies on paragraphs 107-123 of Barros as allegedly disclosing these limitations, but that section of Barros discloses how “a vast amount of information can be organized within a single, small screen and how its layered data can be retrieved by means of exemplar special control apparatus.” The system of Barros “pulls from third-party databases and public information Web sites; and it dynamically refreshes the display with the most current entries,” but it does not disclose a graphical object that has state and that can be relocated outside of an initial application. Instead, if the web browser or other initial application of Barros is terminated, the display of Barros is also terminated. The rejection of claim 1 must therefore be **REVERSED**.

Claim 2 includes the method according to claim 1 wherein said graphical object, once relocated, will persist and maintain state after termination of said initial application. The Examiner relies on paragraph 129 of Barros, but that paragraph only discloses that components

of the graphical user-interface (i.e. web browser) of Barros are depicted as active regions on the screen of a User's workstation, and do not disclose or suggest a graphical object that, once relocated, will persist and maintain state after termination of said initial application (i.e., once the web browser of Barros is closed, the components of the graphical user-interface/web browser do not persist and maintain state). The Examiner's implicit construction of an element of a web browser that does not persist and maintain state after termination of the web browser as meeting this limitation is inherently flawed and contradicted by Barros. The rejection of claim 2 must therefore be **REVERSED**.

Claim 3 includes the method according to claim 1 wherein said initial application location is a web browser and said new location is a desktop provided by an operating system. The Examiner relies on paragraph 76 of Barros, but that paragraph only discloses that the entire application operates within a web browser. The terms "desk" and "desktop" are not even used anywhere in Barros. The Examiner's implicit construction is inherently flawed and contradicted by Barros. The rejection of claim 3 must therefore be **REVERSED**.

Claim 5 includes the method according to claim 1 wherein said relocation may be repeated from a current location to any number of additional platforms. The Examiner relies on paragraph 66 of Barros, but that paragraph only discloses a single, compact computer user-interface with layered indexes, keys, and content, a user interface that is not persistent or relocatable even on the same platform, much less to any number of additional platforms. The rejection of claim 5 must therefore be **REVERSED**.

Claim 8 includes the method according to claim 1 wherein said graphical object comprises one or more user interface components and wherein said components are preserved after a relocation, and one or more connections to one or more external entities and wherein said connections are persistent. The Examiner relies on paragraphs 70, 85 and 101 of Barros, but those paragraphs only disclose smart graphics that can respond to user commands. They are not persistent and cannot be relocated, and therefore are not preserved after relocation. While the smart graphics of Barros can be generated in different locations, they are not persistent graphical objects that have state and that have one or more persistent connections. Instead, they are generated when a user calls a web page, they create a connection depending on whether the user activates a control, and their existence and any connections are terminated when a user navigates to another web page. The rejection of claim 8 must therefore be **REVERSED**.

Claim 9 includes the method according to claim 1 wherein said allowing a user to indicate relocation comprises selecting and dragging a graphical object. The Examiner cites to paragraph 70 of Barros, but as discussed, that paragraph only discloses actions taken in regards to smart graphics, which are not persistent. The existence of any smart graphics is terminated when a user navigates to another web page. The rejection of claim 9 must therefore be **REVERSED**.

Claim 10 includes the method according to claim 1 wherein said allowing a user to indicate relocation comprises discontinuously selecting a graphical object and placing said object in a new location. The Examiner relies on paragraphs 97 and 98 of Barros, but those paragraphs merely discuss various editing tools that allow users to create text, lines or symbols. The text, lines and symbols are not persistent graphical objects that have state and one more possible connections, and they cannot be relocated to a location outside of an initial application. The rejection of claim 10 must therefore be **REVERSED**.

Claim 12 includes an electronic data processing system presenting web content comprising an information appliance displayable representation of a globe, where the globe is persistent and is displayed using three dimensional software rendering and wherein the globe depicts a plurality of geographical points and a plurality of geographical regions representative of geographical locations of a physical world, a logic module that projects web content onto the surface of said representation of the globe, wherein the logic module is configured to extract a plurality of content elements from at least one data file of a separate application, at least one of the content elements conveying information related to at least one geographical location of the physical world and wherein the logic module is configured to superimpose the at least one content element on the globe at the geographical point or geographical region that is representative of the geographical location of the physical world to which the content element relates. The Examiner argues at page 3 of the Office action mailed April 6, 2010, that “Nowhere within applicant’s specification defining the term “a persistent graphical object” nor limitation as stated in Claim 2- 3, 5, 8, 9, 12 and 14.” Applicants note that the Examiner does not even address the Applicants with courtesy, by capitalizing “Applicants,” and that the statement by the Examiner makes no grammatical sense. However, as best understood, the Examiner appears to be arguing that a “persistent graphical object” as not been given a special definition by the Applicants, in accordance with their right to be their own lexicographer. That assertion is

incorrect, and stems from the failure of the Examiner to review the contents of the eight co-pending or provisional priority applications that are incorporated by reference, and which do provide a definition of a persistent graphical object. Consider U.S. application 09/852,971, now U.S. Patent 7,577,700 (the '700 Patent), or U.S. application 09/852,963, now U.S. Patent 7,472,157 (the '157 Patent). A persistent graphical object is defined in both the '700 Patent and the '157 Patent, and the Examiner has improperly failed to consider the definition in these Patents, which were incorporated by reference. Because the Examiner has failed to properly construe the term "persistent" as it is defined in the application by the Applicants, acting as their own lexicographer, the rejection of claim 12 must therefore be **REVERSED**.

Claim 13 includes the system according to claim 12 wherein said information appliance is configured to provide the representation of the globe through a web browser as embedded in a web page and can be relocated to reside on an operating system desktop. As previously discussed, the teachings of Barros related to a web browser application that terminates when the web browser is closed, and which is not persistent and relocatable, and the Examiner has not even considered the proper definition of key claim terms that is provided in the specification, which were defined in co-pending applications (now duly issued U.S. Patents) that were incorporated by reference, and the Examiner has instead relied on arbitrarily overbroad definitions of the relevant claim terms. The rejection of claim 12 must therefore be **REVERSED**.

Claim 14 includes the system according to claim 12 further comprising means for rendering web content on the globe as channels, wherein a channel is a set of related content from a content provider, an association of content providers, or a broker of web content, and wherein a content item in a channel has a geographical distribution. As such, claim 14 invokes 35 U.S.C. 112(6), and must be construed according to that provision of the patent law, where the Examiner must identify the identical function in the prior art and the same or equivalent structure. This has not been done, even though that requirement was explicitly called to the Examiner's attention. For example, the Examiner has utterly failed to identify where the identical function of "rendering web content on the globe as channels, wherein a channel is a set of related content from a content provider, an association of content providers, or a broker of web content, and wherein a content item in a channel has a geographical distribution" is allegedly disclosed in the prior art, nor what the alleged corresponding structure in the prior art is

supposed to be. The rejection of claim 14 must therefore be **REVERSED**.

Claim 15 includes the system according to claim 14 further comprising means for associating the content item with points on said representation of the globe or regions on said representation of the globe. As such, claim 15 invokes 35 U.S.C. 112(6), and must be construed according to that provision of the patent law, where the Examiner must identify the identical function in the prior art and the same or equivalent structure. This has not been done, even though that requirement was explicitly called to the Examiner's attention. For example, the Examiner has utterly failed to identify where the identical function of "associating the content item with points on said representation of the globe or regions on said representation of the globe" is allegedly disclosed in the prior art, nor what the alleged corresponding structure in the prior art is supposed to be. The rejection of claim 15 must therefore be **REVERSED**.

Claim 16 includes the system according to claim 14 further comprising means for providing a textual window that will pop up that reveals details about the content item when a cursor is moved over the content item. As such, claim 16 invokes 35 U.S.C. 112(6), and must be construed according to that provision of the patent law, where the Examiner must identify the identical function in the prior art and the same or equivalent structure. This has not been done, even though that requirement was explicitly called to the Examiner's attention. For example, the Examiner has utterly failed to identify where the identical function of "providing a textual window that will pop up that reveals details about the content item when a cursor is moved over the content item" is allegedly disclosed in the prior art, nor what the alleged corresponding structure in the prior art is supposed to be. The rejection of claim 16 must therefore be **REVERSED**.

Claim 17 includes the system according to claim 14 further comprising means for associating the content item with actions that are triggered when a user selects the content item. As such, claim 17 invokes 35 U.S.C. 112(6), and must be construed according to that provision of the patent law, where the Examiner must identify the identical function in the prior art and the same or equivalent structure. This has not been done, even though that requirement was explicitly called to the Examiner's attention. For example, the Examiner has utterly failed to identify where the identical function of "associating the content item with actions that are triggered when a user selects the content item" is allegedly disclosed in the prior art, nor what the alleged corresponding structure in the prior art is supposed to be. The rejection of claim 17 must

therefore be **REVERSED**.

Claim 18 includes a system according to claim 17 wherein said actions are one or more selected from the group consisting of opening a web browser with a Uniform Resource Locator link as a parameter; bringing content to the globe with a parameter the web address of content; and initiation of communication to a GlobeVoii user through email, chat, or sending an instant message. The Examiner misconstrues a Globevoii as “another a user,” which is not the construction given to that term by the Applicant. As noted, an applicant can be his or her own lexicographer, and the Examiner has failed to even consider the applications that were incorporated by reference or the teachings of the pending application that define what a Globevoii is. What a GlobeVoii is **not** is “another a user.” The rejection of claim 18 must therefore be **REVERSED**.

Claim 20 includes the system according to claim 19 wherein channels reference Envoui sub-compositions configured to be added dynamically to a GlobeVoii application. The Examiner relies on paragraph 126 of Barros, but that paragraph does not disclose an Envoui sub-composition or a GlobeVoii application. An applicant is entitled to be his or her own lexicographer, see M.P.E.P. 2111.01(IV). The term Envoui is defined in the related applications that are incorporated by reference and the term Globevoii is defined both in those applications and throughout the specification, but the Examiner’s construction of those terms is based on the factually incorrect assertion that these terms should not be construed in accordance with the right of the Applicants to be their own lexicographers. The rejection of claim 20 must therefore be **REVERSED**.

Claim 21 includes the system according to claim 14 comprising **means** for licensing channels to channel providers on a pay per channel, pay per end user, or a pay per user action basis. As such, claim 21 invokes 35 U.S.C. 112(6), and must be construed according to that provision of the patent law, where the Examiner must identify the identical function in the prior art and the same or equivalent structure. This has not been done, even though that requirement was explicitly called to the Examiner’s attention. For example, the Examiner has utterly failed to identify where the identical function of “licensing channels to channel providers on a pay per channel, pay per end user, or a pay per user action basis” is allegedly disclosed in the prior art, nor what the alleged corresponding structure in the prior art is supposed to be. The rejection of claim 21 must therefore be **REVERSED**.

Claim 22 includes the system according to claim 14 wherein a texture map rendered on said representation of the globe is part of a separate 2D rendering system, said 2D rendering system comprising a local display managing system for managing repainting damages. The Examiner relies on paragraph 75 of Barros, but as previously discussed, Barros is a 2D system. Barros simply fails to disclose 2D rendering system that comprises a local display managing system for managing repainting damages on a 3D image. The rejection of claim 22 must therefore be **REVERSED**.

5. Barros in view of Babin and further in view of Franco and Fu fails to provide a prima facie basis for the rejection of claim 23 under 35 U.S.C. 103(a), because they fail to disclose each element of the claimed invention.

Claim 23 includes the system according to claim 14 wherein a representation of the globe is configured to display real time daylight illumination of Earth using 3D shading. The Examiner relies on Fu at col. 5, lines 5-20, but nothing in Barros, Babin, Franco or Fu discloses converting a 2D image to a 3D image. The rejection of claim 23 must therefore be **REVERSED**.

6. The Examiner has improperly relied on Official Notice to reject claims 6, 7, 11 and 9 under 35 U.S.C. 103(a) as being unpatentable over Barros, in view of Franco et al., and further in view of Official Notice, contrary to MPEP 2144.03(c).

Claim 6, which includes the method according to claim 3 wherein said desktop provided by an operating system is an interface of a platform, said platform selected from the group consisting of: a windows personal computer, a Macintosh personal computer, a Unix-type operating system, a set-top box, a wireless logic appliance, an internet appliance, a personal digital assistant, or another device connected to a network. The Examiner's reliance on Official notice is based on the misconstruction that the graphical object is not a persistent relocatable graphical object. Making an object persistent and relocatable in any of the listed interfaces is not capable of instant and unquestionable demonstration as being well-known, because none of the cited references discloses a persistent relocatable graphical object on an interface of any platform. The listed platform interface include operating environments that allow applications to operate, but which do not support relocation of persistent graphical objects. Per MPEP

2144.03(c), if the Applicant challenges a factual assertion as being not properly officially noticed or not properly based upon common knowledge, the Examiner must 1) support the finding with adequate evidence, or must 2) clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because Applicant either failed to traverse the Examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the Examiner should include an explanation as to why it was inadequate. The reliance on Official Notice was properly traversed, as recited above, and the Examiner failed to either 1) support the finding with adequate evidence, 2) state that the Applicants failed to traverse the Examiner's assertion of official notice, or 3) state that the traversal was inadequate and include an explanation as to why it was inadequate. Therefore, Official Notice cannot be relied upon, and the rejection of claim 6 must therefore be **REVERSED**.

Claim 7 includes the method according to claim 1 wherein said new location is selected from the group consisting of: a desktop provided by an operating system, and a different computer platform with a different operating system. As previously discussed, making an object persistent and relocatable in any of the listed locations is not capable of instant and unquestionable demonstration as being well-known, because none of the cited references discloses a persistent relocatable graphical object on a new location. The listed locations include operating environments that allow applications to operate, but which do not support relocation of persistent graphical objects. The reliance on Official Notice was properly traversed, as recited above, and the Examiner failed to either 1) support the finding with adequate evidence, 2) state that the Applicants failed to traverse the Examiner's assertion of official notice, or 3) state that the traversal was inadequate and include an explanation as to why it was inadequate. Therefore, Official Notice cannot be relied upon, and the rejection of claim 7 must therefore be **REVERSED**.

Claim 11 includes the method according to claim 8 wherein said one or more external entities are selected from the group consisting of: web servers, other applications, background processes, and other remote processes. As previously discussed, making an object persistent and relocatable in any of the listed external entities is not capable of instant and unquestionable demonstration as being well-known, because none of the cited references discloses a persistent relocatable graphical object on a new entity. The listed entities include applications, but do not

support relocation of persistent graphical objects. The reliance on Official Notice was properly traversed, as recited above, and the Examiner failed to either 1) support the finding with adequate evidence, 2) state that the Applicants failed to traverse the Examiner's assertion of official notice, or 3) state that the traversal was inadequate and include an explanation as to why it was inadequate. Therefore, Official Notice cannot be relied upon, and the rejection of claim 11 must therefore be **REVERSED**.

Claim 19 includes a system according to claim 14 further comprising means for defining channels using Extensible Markup Language format describing content at least in terms of geographic position, click-action, and parameters for click action. As such, claim 19 invokes 35 U.S.C. 112(6), and must be properly examined according to that law. Official notice cannot be used to provide missing function or structure. Furthermore, the reliance on Official Notice was properly traversed, as recited above, and the Examiner failed to either 1) support the finding with adequate evidence, 2) state that the Applicants failed to traverse the Examiner's assertion of official notice, or 3) state that the traversal was inadequate and include an explanation as to why it was inadequate. Therefore, Official Notice cannot be relied upon, and the rejection of claim 19 must therefore be **REVERSED**.

VIII. APPENDIX OF CLAIMS (37 C.F.R. § 41.37(c)(8))

The text of the claims involved in the appeal are as follows:

1. A method of presenting data over a network comprising:

providing on a display device of a data processor a persistent graphical object representing a rotating globe that depicts a plurality of geographical points and a plurality of geographical regions representative of geographical locations of a physical world;

extracting from a data memory a plurality of content elements from at least one data file, at least one of the content elements conveying information related to at least one geographical location of the physical world;

superimposing the at least one content element on the graphical object at the geographical point or geographical region that is representative of the geographical location of the physical world to which the content element relates;

presenting said graphical object in a composition accessed by an initial application, said object having state and having one or more external connections;

allowing a user to indicate relocation of said graphical object to a location outside of said initial application; and

thereafter moving said graphical object to said outside location, preserving state of said graphical object.

2. The method according to claim 1 wherein said graphical object, once relocated, will persist and maintain state after termination of said initial application.

3. The method according to claim 1 wherein said initial application location is a web browser and said new location is a desktop provided by an operating system.

4. The method according to claim 1 wherein at least some of said content elements convey at least one of the following types of information:

one or more images indicating weather in various locations; and

one or more links indicating news stories related to a particular location displayed on said globe.

5. The method according to claim 1 wherein said relocation may be repeated from a current location to any number of additional platforms.

6. The method according to claim 3 wherein said desktop provided by an operating system is an interface of a platform, said platform selected from the group consisting of: a windows personal computer, a Macintosh personal computer, a Unix-type operating system, a set-top box, a wireless logic appliance, an internet appliance, a personal digital assistant, or another device connected to a network.

7. The method according to claim 1 wherein said new location is selected from the group consisting of: a desktop provided by an operating system, and a different computer platform with a different operating system.

8. The method according to claim 1 wherein said graphical object comprises:
one or more user interface components and wherein said components are preserved after a relocation; and
one or more connections to one or more external entities and wherein said connections are persistent.

9. The method according to claim 1 wherein said allowing a user to indicate relocation comprises selecting and dragging a graphical object.

10. The method according to claim 1 wherein said allowing a user to indicate relocation comprises discontinuously selecting a graphical object and placing said object in a new location.

11. The method according to claim 8 wherein said one or more external entities are selected from the group consisting of: web servers, other applications, background processes, and other remote processes.

12. An electronic data processing system presenting web content comprising:
an information appliance displayable representation of a globe, where the globe is persistent and is displayed using three dimensional software rendering and wherein the globe depicts a plurality of geographical points and a plurality of geographical regions representative of geographical locations of a physical world;
a logic module that projects web content onto the surface of said representation of the globe:

wherein the logic module is configured to extract a plurality of content elements from at least one data file of a separate application, at least one of the content elements conveying information related to at least one geographical location of the physical world; and

wherein the logic module is configured to superimpose the at least one content element on the globe at the geographical point or geographical region that is representative of the geographical location of the physical world to which the content element relates.

13. A system according to claim 12 wherein said information appliance is configured to provide the representation of the globe through a web browser as embedded in a web page and can be relocated to reside on an operating system desktop.

14. A system according to claim 12 further comprising means for rendering web content on the globe as channels, wherein a channel is a set of related content from a content provider, an association of content providers, or a broker of web content, and wherein a content item in a channel has a geographical distribution.

15. A system according to claim 14 further comprising means for associating the content item with points on said representation of the globe or regions on said representation of the globe.

16. A system according to claim 14 further comprising means for providing a textual window that will pop up that reveals details about the content item when a cursor is moved over the content item.

17. A system according to claim 14 further comprising means for associating the content item with actions that are triggered when a user selects the content item.

18. A system according to claim 17 wherein said actions are one or more selected from the group consisting of:

opening a web browser with a Uniform Resource Locator link as a parameter;
bringing content to the globe with a parameter the web address of content; and
initiation of communication to a GlobeVoii user through email, chat, or sending an instant message.

19. A system according to claim 14 further comprising means for defining channels using Extensible Markup Language format describing content at least in terms of geographic position, click-action, and parameters for click action.

20. A system according to claim 19 wherein channels reference Envooi sub-compositions configured to be added dynamically to a GlobeVoii application.

21. A system according to claim 14 comprising means for licensing channels to channel providers on a pay per channel, pay per end user, or a pay per user action basis.

22. A system according to claim 14 wherein a texture map rendered on said representation of the globe is part of a separate 2D rendering system, said 2D rendering system comprising a local display managing system for managing repainting damages.

23. A system according to claim 14 wherein a representation of the globe is configured to display real time daylight illumination of Earth using 3D shading.

IX. EVIDENCE APPENDIX (37 C.F.R. 41.37(c)(9))

None.

X. RELATED PROCEEDINGS APPENDIX (37 C.F.R. 41.37(c)(10))

None.

If any applicable fee or refund has been overlooked, the Commissioner is hereby authorized to charge any fee or credit any refund to the Deposit Account of Jackson Walker L.L.P., No. 10-0096.

Respectfully submitted,

By: 

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